Canadian Centre
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CANADIAN FIRMS, CANADIAN VALUES.

Canadian Business for Social Responsibility.

May 2000.

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Department of Foreign Affairs and International Trade
Ministère des Affaires étrangères et du Commerce international

Canada

Canadian Business for Social Responsibility (CBSR)

Roundtable on Canadian Firms/Canadian Values: Foreign Policy Implications of Business Canadian Firms Operating in Risky States. Vancouver, May 2nd 2000

ROUNDTABLE FINDINGS

Introduction

On May 2nd CBSR hosted a roundtable meeting of Canadian businesses, NGOs, social investors, and academics to discuss how the Government can better manage the activities of Canadian firms operating in risky states; a full list of participants is attached. The meeting was part of a larger research initiative undertaken by CBSR and funded by the Canadian Centre for Foreign Policy Development.

Objectives

The objectives of this meeting were:

- to gather responses and suggestions in the draft research paper (prepared by Dr. Kai Alderson of the Institute for International Relations at UBC), especially regarding the roles and responsibilities of government, business and NGOs in promoting corporate social responsibility;
- To collect recommendations regarding specific measures that could be taken by 1) the federal Government 2) the Canadian business and 3) NGOs; and
- to promote mutually informative discussion on these issues among government, business, NGO and academic representatives attending the roundtable.

General Observations

Complexity of Definitions

Participants felt that some terms used in the report were difficult to define. These included: 'risky states', 'human security', 'complicity' in human rights abuses, corporations' 'sphere of influence', and what precisely was meant by 'Canadian values'. This last term was felt to be particularly problematic, for two reasons. First, it is too vague. Second, it is presumptuous to assume that Canadians have cornered the market on good social and environmental practices. There was a strong consensus among participants that standards had to based on international law instruments and especially the Universal Declaration of Human Rights. Doing so would avoid charges of paternalism and arguments based on cultural relativism.

Arguments for Government Action

In addition to the arguments put forward in the draft discussion paper, participants noted the growing academic consensus that strong, rules-based civil society is a key ingredient in economic growth and prosperity. This provides a reason why the Canadian Government should act in promoting good corporate citizenship abroad and a further reason why businesses see a long-term interest in adopting corporate social responsibility (CSR) policies. With this interpretation, human rights issues, human security problems within 'failed states', and corruption issues can be grouped together as governance failures that warrant international concern.

'Canadian Companies' versus 'Canadian-based Multinationals'

Some of the larger companies represented at the roundtable noted an important distinction between Canadian firms operating abroad and international firms that happen to be headquartered in Canada. The issue raised was not so much a question of legal jurisdiction but rather an effort to highlight the potential for conflict between regulatory action by the Canadian Government and the organizational structure and culture of these global firms.

International Issues, Domestic Experience

It was noted that the discussion paper focuses exclusively on international issues but that Canadian firms are dealing with some of the same issues domestically, especially in terms of local community consultation and aboriginal relations. Some of these domestic experiences can be used as lessons when creating equivalent international activities (although challenges tend to be more complex when operating overseas). Two particular lessons noted were 1) the importance of dealing with local actors, including members and affiliates of local government and 2) that the distribution of the economic benefits of development is often as important as narrowly-defined human rights issues. For their part, NGO representatives noted that they are being challenged to develop domestic programs similar to those used internationally.

Opportunities for Training

Training and education were thought to be key issues that were somewhat neglected by the discussion paper. These are crucial ingredients in what is essentially a process of cultural change taking place inside business firms. Adopting codes of conduct is one thing, disseminating them throughout the organization and effectively implementing them quite another. This is an issue affecting all levels, from senior management to front-line staff. The need for information in local languages was specifically noted. NGOs have training materials and might be able to play a role here. Government could encourage business schools to develop curriculum in this area.

Questions on the 'Political Roles' of Companies

Twenty years ago multinational corporations were being criticized for interfering in the domestic politics of host governments. The 'political role' of companies is still a sensitive issue between multinational firms and host governments. Human rights-related activities on the part of international firms can be seen as political interference. There is a great deal of uncertainty in the business community about what represents appropriate behavior. The Canadian Government has a role to play in articulating societal expectations.

Competitive Realities

Getting into countries is an extremely competitive business for companies in the extractive industries. Some companies won't go into risky areas because of the risk to their reputations, but others will. The Government should ensure that firms taking human rights commitments seriously are not at a disadvantage.

Call for Coherence

A great deal of discussion concerned the fundamental incoherence of Government policy. Numerous examples were cited:

- the distance between words and action in the recent Talisman case;
- the fact that the Canadian Government portrays itself as a facilitator of NGO-business dialogue but argued *against* incorporating stakeholder consultation criteria in the OECD Voluntary Code of Conduct for Multinational Enterprises;
- the disconnect between Minister Axworthy's invocations of 'responsible trade' and the priority placed on business promotion activities at the embassy level;
- the fact that the Government calls on corporations to act ethically overseas yet neither government procurement nor taxpayer-financed benefits to corporations are made conditional on the effective implementation of codes of international conduct;
- that Canada claims a leadership role in promoting human rights yet it is behind both the U.S. and the U.K. in providing a legal and policy environment in which global corporate citizenship can be promoted effectively (particular concern was expressed over restrictions on shareholder resolutions in the revised *Canadian Business Corporations Act* currently before Senate).

Policy Requirements – Flexibility, Clarity, Enforceability

Special emphasis was placed on the uncertainty produced by current Canadian policy, which sends mixed signals to Canadian firms, to our international partners, and to human-rights violating regimes. Corporations cannot respond to purely subjective expectations. The desired set of rules should be simple, predictable, and provide for judgements that are as objective as possible. The Government also needs to be able to respond in a flexible way to particular cases. The need for a progressive 'ladder' of clear responses was discussed. Participants felt strongly that flexibility and clarity were not mutually exclusive as long as the relevant thresholds were clearly defined. For companies that are already committed to managing their operations ethically, improved country briefings are essential (currently the Canadian Government relies too much on information derived from host government sources). Furthermore, companies that do well in terms of corporate social responsibility should be publicly praised by senior Government figures (too much attention is paid to the negative end of the spectrum and not enough to the power of reputation as a motivator). There was broad consensus amongst both business and NGO representatives that taxpayers' money should not go to firms that violate international standards. Enforcement actions, whether through a modified *Special Economic Measures Act* or through some other legislation, should be reserved for behavior that is truly 'beyond the pale'. However, it was argued that credible incentives are needed in order to make voluntary approaches to compliance more effective. There was significant NGO-business consensus on this point.

Canadian Policy – Sovereign Rights, Sovereign Rules
Some concern was expressed over the apparent contradiction between an activist approach and Canada's strenuous objections to American attempts to impose unilateral, extraterritorial sanctions on Canadian firms doing business in Cuba and Iran. Others doubted that a small country like Canada could make an effective difference by acting alone to impose sanctions on risky states. However, it was forcefully argued that this was not the appropriate analogy. NGOs are calling on the Government to target inappropriate business practices by Canadian corporations, not to impose unilateral sanctions on foreign governments. A more appropriate analogy would be legislation that penalizes Canadians who engage in corrupt practices or child prostitution while abroad. There is no bar to Canadian legislation aimed at dissuading corporate complicity in human rights violations in their overseas operations. The Canadian government has the sovereign right to regulate Canadian firms.

Recommendations to Government

Canada should strive to become a world leader in global corporate citizenship:

- the Prime Minister should publicly articulate society's expectation that Canadian firms reflect fundamental international norms in their operations abroad;
- the Government of Canada must exercise strong leadership on the issue of global corporate citizenship in multilateral forums—the UN, the G8, the OECD, etc.;
- exemplary corporate practices should be publicly recognized on an ongoing basis;
- the Government should financially support further research and training in the area of global corporate citizenship.

Positive measures must be backed up by concrete incentives:

- access to business benefits provided by the Government of Canada or Government agencies—e.g. participation in Team Canada missions, EDC grants, CIDA grants, government procurement, etc.—should be made conditional on the effective implementation of international codes of responsible business practices beyond 'Canadian-values';
- the Government should seek legislative means to penalize firms for complicity in gross violations of human rights, taking the form either of revisions to the *Special Economic Measures Act*, regulatory action under the *Competition Act*'s misrepresentation clauses, or new legislation.

The Government should broaden and formalize stakeholder consultations on these issues.

- The Government should seek to identify and solicit input from firms that have successfully implemented corporate social responsibility policies.
- The Government should convene regular multi-stakeholder meetings of NGOs, businesses, and Government officials to discuss CSR expectations and methods of implementation. These discussions should take place both in Canada and locally at the embassy level.
- Any industry-wide consultations must incorporate dialogue with NGO groups to ensure that the results are viewed as credible.

Recommendations to Business

The business sector should acknowledge that private companies are social actors and hence have obligations under international law. Companies could do a lot to build public trust by admitting their own fallibility and redressing problems once they have arisen. In particular, businesses were encouraged to foster relations with NGO's and community organizations, especially local ones.

Businesses must improve openness and transparency. Codes of conduct need to be included and used in terms of the creation and implementation of management systems. Corporate commitments to social responsibility are only credible where their implementation can be measured and verified by independent outside groups. Social reporting has to mean more than a mere internal survey of a firm's practices. Social performance data should be publicly available and the information contained in these social reports must be subjected to rigorous and independent assessment. There was agreement that a dialogue needs to be opened with accounting professionals on these issues, especially in terms of their incorporation into training and accreditation.

A strong view was expressed that social responsibility and social reporting considerations should be extended to the investor community. Market analysts tend to be unaware of corporate social responsibility issues. Although there is academic research suggesting a strong connection between corporate social responsibility practices and improved revenues, the correlation with stock price has been difficult to establish. It was suggested that companies should ensure social reporting is prominent in annual reports and in investor relations packages. The example of Britain was also mentioned, where pension funds have been required to report on broader range of issues, including social responsibility. In general, banks were identified as a key intermediary in the effort to promote CSR. If banks were to demand social reporting initiatives they could exert a wide influence through their client networks.

Socially responsible businesses have to be more vocal in advocating good corporate citizenship. There is a need for good business case studies that demonstrate the competitive advantage of doing the right thing. Industry associations are often perceived as expressing lowest common denominator thinking. Leading businesses have to get more engaged in strategies to raise awareness and promote CSR within their industries. This is especially important in terms of developing and implementing standards. The Global Mining Initiative was mentioned as an example where this was happening, and the 'Responsible Care' program within the chemical industry was cited as a good model because it involves monitoring by local communities. Another model mentioned was business rewarding business through awards programs like 'Ethics in Action'.

Recommendations to NGOs

NGOs play an important role in gathering and disseminating credible information on issues, companies, and countries. NGOs might consider new audiences for this information. Business representatives noted that the talent market is an area where a reputation for corporate social responsibility is a seen as a competitive asset. NGOs could target information campaigns on job seekers, especially in the high tech sector.

Business representatives called on NGOs to move from advocacy to involvement. This would mean clearly documenting their expectations and giving assistance in terms of the interpretation and implementation of these goals. NGOs need to indicate where they where stand on the spectrum of views, who they see as their constituency, where flexibility can be expected and what is 'non-negotiable'. This would help corporations identify potential partners. Above all, greater consistency is needed. The perception is that NGOs choose 'easy' targets: large companies or those that have already articulated a commitment to social responsibility. This reduces credibility and erodes corporate willingness to enter into partnerships with them.

At the same time, NGO representatives agreed that a more tolerant attitude toward alternative strategies is needed within the NGO movement and noted that this tolerance is in the process of emerging. There is a growing recognition that pragmatic engagement does not mean sacrificing principles. However, it was firmly stated that some movement from government and corporations is needed if the current polarized, adversarial climate is to be improved.

In Addition:

- Business representatives were receptive to the idea that NGOs might act as monitors. Certainly NGOs should be involved in developing key performance indicators. However, a lack of resources was noted as a real obstacle to fulfilling this role.

- NGOs should engage in ongoing discussions with business in part to develop a common language for discussing corporate social responsibility issues and gain greater appreciation of business strategies.

- An important role for NGOs is helping local communities develop advocacy tools and improving their capacity to negotiate with firms.

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Canadian Firms/Canadian Values: Foreign Policy Implications of Canadian Commercial Activities in Risky States

Background Research
Discussion Paper

Prepared for Canadian Business for Social Responsibility and the Canadian Centre for Foreign Policy Development

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Canadian Firms/Canadian Values
Executive Summary

This paper sets out the policy implications of Canadian commercial activities in risky states and assesses the policy options available to the Canadian government to better manage such activities. It is composed of three sections:

- **Chapter 1** defines key terms and addresses the foreign policy and the business case for taking the issue of corporate involvement in risky states seriously.
- **Chapter 2** outlines the strengths and weaknesses of the current Canadian approach to this issue, surveying both corporate and government initiatives.
- **Chapter 3** reviews seven policy options available to Government. These are:
    - Enhanced country briefings to potential investors in risky states.
    - Stronger codes of conduct
    - Revise *Canadian Business Corporation Act* to make it easier to bring shareholder resolutions related to social issues.
    - Revise *Income Tax Act* to disallow deductions for business taxes paid to human rights-violating regimes.
    - Revise *Special Economic Measures Act* to permit human security-related sanctions.
    - Human rights-related regulation via Canadian securities exchanges
    - Harmonize implementation of UN sanctions across OECD.

This paper is intended as the first step in a deliberative process. To that end it concludes with a list of eight questions for discussion and reflection:

1. Do Canadian companies have a duty to reflect Canadian values in their operations abroad? If so, which Canadian actors legitimately give voice to those values?
2. Does the responsibility of Canadian corporations extend beyond observing Canadian and host-country laws and multilateral economic sanctions? If so, what are these responsibilities?
3. In the past, multinational corporations have been accused of excessive political interference in host country politics. Do public expressions of concern over human rights violations in host countries amount to 'political interference'?
4. How should we define 'corporate complicity' in human rights abuses by host-country governments?
5. What would make *you* decide not to do business in a particular country?
6. Is current Canadian law adequate to the task of managing Canadian commercial activities in risky states? Where does it fall short?
7. Surveying the menu of policy options outlined in this paper, which would you recommend to government and business? Which deserve further study?
8. What can Canadian companies do to responsibly manage commercial activities in risky states, once the decision to invest there has been made?

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Introduction

The recent controversy over Talisman Energy's investments in an oil-pipeline project in Sudan raised a number of important questions for Canadians. Should Canadian firms invest in countries, such as Burma or Afghanistan, where significant portions of the population suffer serious human rights abuses or threats to their personal security? Do Canadian companies bear special responsibilities when operating in environments that are the scene of bloody civil wars or brutal dictatorships? What is the role of the Canadian government in ensuring that Canadian firms reflect Canadian values in their commercial operations overseas?

Funded by the Canadian Centre for Foreign Policy Development and produced by Canadian Business for Social Responsibility (CBSR), this discussion paper seeks to address some of these larger issues. It is intended as a first step in a deliberative process. Specifically, it sets out some of the policy implications of Canadian commercial activities in risky states and assesses some of the policy options available to the Canadian government to manage such activities.

This paper is composed of three chapters. The first chapter outlines the issues that this paper seeks to address. The second chapter reviews the current policy landscape and the legal instruments available to the Canadian government to manage corporate involvement in risky states. The third chapter reviews some of the policy options for enhancing the capacity of government to deal with these issues. The paper concludes with a list of eight questions to serve as the basis for discussion and reflection.

This paper is intended to promote discussion and provoke comment. Please disseminate this document as widely as possible. To receive additional copies of this document contact Canadian Business for Social Responsibility [(604) 323-2714].

Chapter 1
Outlining the Issues

In this chapter we define our terms and outline the foreign policy and business case for taking corporate involvement in risky states seriously as a public policy issue.

Definitions

'Risky State'

For the purposes of this study, a 'risky state' is defined as one in which a significant portion of the population faces unacceptably high levels of personal threat from government actors, from nominally-independent but government-sanctioned actors, or because a government persistently fails to maintain even minimal public order.

On the basis of this definition, fourteen 'risky states' have been identified:

> Afghanistan, Algeria, Angola, Burma (Myanmar), Burundi, Columbia, the Democratic Republic of Congo, Iran, Iraq, the Federal Republic of Yugoslavia, Libya, Sierra Leone, Sudan, and Syria.[1]

Although admittedly subjective, this definition aims to highlight those countries in which even a minimal level of human security is absent. The intention here is to throw the policy issues involved into sharp relief by looking at the most egregious violators of basic humanitarian norms, not to offer a clean 'bill of health' to other states.

'Commercial activities'

For the purposes of this paper, the term 'commercial activities' in a given state is to be construed broadly. It includes, but is not limited to:

- Direct ownership of factories, refineries, or other commercial enterprises;
- Exchanges of goods and/or services with local private, or state-owned firms;
- The provision of goods and/or services to Canadian or foreign firms for use in a 'risky state';
- Joint ventures with local partners or share-ownership in such ventures;
- Operation of mineral or petrochemical concessions;
- Mineral- or petrochemical-related exploration, testing, or surveying.

[1] This list was compiled on the basis of authoritative, country-by-country human rights surveys issued by Human Rights Watch, Amnesty International, and the US State Department.

'Corporate Complicity'

Signatories to the government-sponsored Code of International Ethics for Canadian Businesses undertake not to be 'complicit in human rights abuses'. But nowhere in that code is the notion of corporate complicity defined. The American-based group Human Rights Watch has the following useful discussion:

> Complicity occurs in several cases.
> - First, when corporations benefit from the failure of government to enforce human rights standards.
> - Second, when corporations are involved in systematic violations of rights and the state, aware of such violations, fails to meet its obligations under international human rights law...
> - Third, when a company facilitates or participates in government human rights violations.[2]

The Canadian Lawyers Association for International Human Rights (CLAIHR) adds that corporate complicity extends to cover those acts that increase human rights-abusing *activity* by a regime as well as those acts that increase the human rights-abusing *capacity* of the regime.[3] An example of the former type of complicity might be encouragement by a firm's presence of government actions to forcibly relocate indigenous populations. An example of the latter type might be the use of company-built facilities such as roads or airstrips by government forces engaged extra-area military operations.[4]

For the purposes of this discussion paper, a fairly broad definition of corporate complicity will be used. However, it is recognized that this key notion is in need of further clarification.

The Foreign Policy Case

How Canadian firms operate in risky states is an important foreign policy issue for at least four reasons.

1. First, the issue of where and how Canadian firms operate is a serious irritant in US-Canadian relations. These differences impose real (if un-quantifiable) diplomatic costs on Canada. Such tensions would be easier to manage if Canada had in place a principled, public, and prudent strategy for mitigating the human rights impacts of Canadian corporate activities in risky states.

2. Second, Minister of Foreign Affairs Lloyd Axworthy has championed the notion of human security as the guiding principle of Canadian diplomacy in the post-Cold War world. This inspiring vision has led to some real successes in Canadian diplomacy, most notably in the Ottawa Convention banning landmines. However, leadership of the human security agenda is difficult to sustain when the

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[2] Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations* (New York: Human Rights Watch, 1999), p. 105.

[3] Canadian Lawyers Association for International Human Rights, *Backgrounder: Options Available to the Government of Canada in Responding to Canadian Corporate Complicity with Human Rights Abuses.* Manuscript.

[4] Incidents of both types were documented by the Harker Commission in its investigation into Talisman Energy's operations in Sudan.

Government is placed on the defensive by the activities of private Canadian firms.

3. The difficulties that Canadian diplomacy has laboured under in dealing with these issues are self-imposed. The Government's 1991 *Canada in the World* policy statement identified three key objectives for Canadian foreign policy: the promotion of prosperity and employment for Canadians, the protection of Canadian security, and the projection of Canadian values and culture abroad. The issue of Canadian commercial activities in risky states stands at the point of maximal interference between these three pillars of Canadian foreign policy. To date, the Canadian government has responded to conflicts *amongst* these three objectives in an ad hoc fashion. Canada's reputation at home and abroad has suffered as a consequence of the resulting incoherence.

4. Fourth, and finally, media reporting on private commercial activities in risky states has the potential to sap Canadians' support for global economic engagement and provides potent ammunition to globalization's more strident critics. As a trading nation, Canada's economic interests are well served by an expanding, open, rule-based international economic order. In the wake of public protests against the WTO negotiations in Seattle, there can be no more important public policy issue facing the Canadian Government than re-building trust in its capacity to manage economic globalization to the benefit of Canadians and the world. Dealing energetically with the issue of Canadian commercial activities in risky states would send a strong signal that the Canadian government takes the social legitimacy of globalization seriously.

The Business Case

There is a growing recognition among the Canadian business community that engaging with corporate accountability issues is a strategic necessity. The World Business Council on Sustainable Development has defined corporate social responsibility as 'the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large'.[5] The ethical management of international partnerships is clearly an important strand within the corporate social responsibility movement.

Companies engage in measures to promote social responsibility for a number of reasons. In addition to the personal value systems of their owners and managers, Canadian companies increasingly recognize reputation as an important (if intangible) strategic asset that can have a profound impact on their competitive success. Business leaders understand the advantages that flow from operating in a manner that is consistent with the values of their customers and their employees.

The Canadian public strongly values corporate accountability. In a recent cross-national survey, only 11% of Canadians polled agreed with a narrow view of corporate social responsibility ('making a profit, paying taxes, employing people and obeying all laws') whereas 43% of Canadians chose an expanded notion of corporate responsibilities ('to exceed all laws, set a higher ethical standard, and help build a better society for all') and 45% thought a company's responsibilities fell somewhere

[5] Phil Watts and Lord Home, *Meeting Changing Expectations: Corporate Social Responsibility* (London: World Business Council on Sustainable Development, March 1999), p. 3.

between these two extremes. Over $4 billion is currently invested in socially and/or environmentally screened mutual funds, and Canadians are amongst the most willing in the world to punish firms for perceived violations of social values. Opinion leader research suggests that these pressures are likely to increase over the coming years.[6]

Consumer pressure is unlikely to have a strong influence on corporate behaviour outside the brand-rich consumer goods and services industries. A case can be made that poor corporate accountability in other sectors is a form of 'market failure' demanding government remediation. Canadian firms already engaged in corporate social responsibility initiatives have a real interest in supporting such efforts. First, public opinion is relatively undiscerning. A single high-profile case of corporate complicity in human rights abuses can damage the reputation of an entire sector. Secondly, corporate social responsibility takes resources. Companies that operate overseas in an ethical manner are at a disadvantage vis-à-vis their less scrupulous rivals. Such firms would benefit from a more active approach to monitoring and, where necessary, curtailing those corporate activities that lead to gross human rights violations.

Sanctions vs. Constructive Engagement

Some would argue that 'constructive engagement', or unfettered economic interaction, is the best way to promote human security in risky states. The Business Council on National Issues (BCNI) has articulated such a position, advocating Canadian business involvement in non-democratic countries because 'trade will act as a positive catalyst for change'.[7] The rationale for the constructive engagement position rests partly on the disappointing record of economic sanctions as a tool of human rights diplomacy and partly on the view that economic development leads directly to political liberalization.

Although it is true that economic development is a key ingredient to enhancing human security, it does not follow that economic engagement *in itself* reduces civil conflict in risky states. Recent reports – investigating in detail the diamond industry in Sierra Leone and the oil industries in Angola and Nigeria – have demonstrated conclusively that foreign investment in risky states can prolong conflict and exacerbate human security.[8]

Moreover, to criticize economic sanctions as a whole is inappropriate here. Some sanctions work better than others. In particular, research indicates that investment sanctions are far more sustainable and far more likely to be effective than are trade

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[6] Polling data is derived from a cross-national Environics survey conducted on behalf of the Prince of Wales Business Leaders Forum and the Conference Board entitled *The Millenium Poll on Corporate Social Responsibility*, available for download on the UN Global Compact Website (http://www.unglobalcompact.org). Details on social investing in Canada can be found on the Social Investing Organization's website (http://www.web.net/~SIO).

[7] Quoted in Craig Forcese, 'Human Rights Mean Business: Broadening the Canadian Approach to Business and Human Rights' *University of Toronto Law Review* (forthcoming).

[8] See Ian Smillie, Lansana Gberie, and Ralph Hazleton, *The Heart of the Matter: Sierra Leone, Diamonds & Human Security* (Ottawa: Partnership Africa Canada, 2000); Global Witness, *A Crude Awakening: The Role of the Oil and Banking Industries in Angola's Civil War and the Plunder of State Assets* (London: Global Witness, 2000); Bronwen Manby, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities* (New York: Human Rights Watch, 1999).

sanctions. It should also be borne in mind that the target of sanctions contemplated by human rights activists are Canadian firms that are complicit in human rights abuses, not states as a whole.

The 'sanctions vs. constructive engagement' debate misses the point because it focuses on state-to-state relations rather than the activities of individual firms. In contrast, this report focuses on how the Canadian Government can respond to concerns over individual projects and particular business practices. There are good projects in 'bad' states, as well as bad projects in 'good' states. The term 'risky state' was chosen advisedly. Firms operating in these states are most at risk of finding themselves complicit in gross violations of human rights. It is not necessarily the case that the very presence of the firm in that country is itself an act of complicity. What is important is how the Canadian government can best encourage corporations to manage their international partnerships ethically and to put a stop to business practices that do damage to Canada's reputation at home and abroad.

Chapter 2
Current Canadian Policy

What follows is a brief description of the current policy landscape. It covers both what the Canadian government does to encourage responsible commercial activities in risky states and initiatives that have emerged from within the corporate sector.

Corporate Initiatives

There is no 'ethics deficit' for the majority of Canadian firms. Most Canadian companies involved in risky states conduct their operations ethically. Even firms that appear insensitive to human rights conditions in host countries often do so because they are operating out of an alternative values system. These firms have learned the lessons of the 1970s all too well: that it is unethical for multinationals to interfere in the politics of host countries. But there is a small minority of Canadian companies that *are* complicit in human rights abuses and *do* contribute, directly or indirectly, to human insecurity in the countries where they operate. Human rights-friendly companies must do more than manage their own operations responsibly. They must also seek to exert a positive influence on these ethical outliers.

A strong corporate voice calling for ethical overseas activities is only beginning to emerge. It can be seen in the activities of organizations such as Canadian Business for Social Responsibility as well as in the practices of its members. The most important corporate initiative emerged in 1997: the International Code of Ethics for Canadian Business (reproduced in Appendix A). This important document sets out high standards for the conduct of Canadian corporations abroad. However, human rights groups and social investors have criticized the code for its over-generality, the fact that its 'standards' remain at the level of aspirations not concrete commitments, and the absence of externally verifiable criteria for adherence. The code has also been slow to catch on. In the three years since its drafting, only fifteen Canadian companies have signed on (the most recent of which was Talisman Energy Ltd).

Government Initiatives

The balance of emphasis in Canadian foreign economic policy in recent years has consistently been trade-promotion in a stable and open global economy. No one can doubt Minister Axworthy's personal commitment to the cause of human security and 'responsible trade',[9] but in the economic sphere, human rights- and human security-related activities have remained very much a minor theme.

The government has sought to encourage Canadian firms to conduct their commercial activities in risky states so as to avoid complicity in three main ways. First, the government has played a leadership role in setting the tone of public discourse on matters of corporate social responsibility. A high point in this process of public exhortation occurred when in 1997 the Government endorsed the Code of International Ethics for Canadian Companies. But as the Talisman Energy case

[9] See *Notes for an Address by the Honourable Lloyd Axworthy to the International Conference on Universal Rights and Human Values 'A Blueprint for Peace, Justice, and Freedom,' November 27, 1998.*

clearly illustrates, moral suasion has not proved adequate in itself to alter the behaviour of Canadian firms.[10]

The second avenue of influence lies through the Department of Foreign Affairs and International Trade (DFAIT), which provides investor briefings to Canadian firms on an ongoing basis. These briefings cover a wide range of information on the climate for doing business in particular states, and include human rights-related information where it is deemed relevant. In interviews conducted for this discussion paper, business opinion appeared mixed on the utility of these information-brokering activities. Some viewed DFAIT with suspicion, whereas others have found it a valuable source of information. One thing is clear: firms have to be independently motivated to take human rights-related considerations seriously for this avenue of influence to operate with effect. There is little if any formal linkage between human-rights record of specific firms and government- provided services to companies investing overseas such as export promotion, participation in Team Canada trade missions, and political risk insurance.

Third, there are a number of Canadian statutes relating to economic sanctions. Sanctions legislation is a much-needed element in any coherent strategy for managing private commercial activities in risky states. The most promising piece of sanctions legislation is the *Special Economic Measures Act*.

The *Special Economic Measures Act (SEMA)* is a relatively new piece of legislation, introduced to fill holes left by older legislation. It is flexible, powerful, and comprehensive (see Appendix B). Its wording allows the Government a great deal of discretion in the kinds of measures envisioned. In particular, the Act could be used to target a specific *firm's* activities (in contrast to, for instance, the *Import and Export Permits Act* which only permits the targeting of states) and provides a legal basis for curtailing overseas *investments* as well as international *trade*.

However, there are also disadvantages to this act, which have largely vitiated its utility as an instrument of government policy. The *Act* can be triggered under two circumstances:

1. in response to calls of an international organization or association of states of which Canada is a member;

2. where Cabinet is of the opinion that a grave breach of international peace and security has occurred that has resulted, or is likely to result, in a serious international crisis.

The problem is the phrase 'grave breach of international peace and security', which has a defined (though still-tenuous) meaning in international law. Currently, officials within the Department of Foreign Affairs and International Trade cleave to a narrow interpretation of this clause, holding that 'breach of international peace and security' refers solely to international incidents on a scale and of a type similar to those leading to the Gulf War. This narrow interpretation is unfortunate. Not only is it out

[10] The Harker Commission noted approvingly the ongoing dialogue between Talisman Energy and four non-governmental on the issues of how to promote human security in Sudan. Very soon after the Harker Commission reported its findings (and it became clear that no sanctions would be imposed on Talisman) these talks broke down. See Ernie Regehr, 'Drilling for a Corporate Conscience,' *The Global and Mail*, March 20th, 2000.

of keeping with the legislative history of the Act, it also puts Canada out of step with its major international partners.

Assessment

In conclusion, there are a number of holes in the current policy landscape. The Government's strongest claim to leadership on corporate social responsibility issues has been its exhortations to better behaviour on the part of Canadian corporations. While such exhortations no doubt play a role in promoting corporate social responsibility, they are not sufficient on their own. Voluntary codes of conduct, in particular, tend to be ineffective in the absence of some penalties or other material incentives associated with gross noncompliance with their underlying rationale. While Canada has in place powerful and flexible sanctions legislation in the form of the *Special Economic Measures Act*, Cabinet has been unwilling to use it. Canada has in place the beginnings of a public, principled, and prudent human rights strategy. The task ahead is to strengthen the individual elements and to integrate them into a coherent framework.

Chapter 3
Policy Options: The Menu for Choice

No *single* recommendation is likely to provide a sufficient improvement to the capacity of the Canadian Government to respond to Canadian commercial activities in risky states. A public, prudent and principled policy for managing such activities is likely to require a comprehensive package of reforms. What follows is a brief description of some of the policy initiatives that might be recommended as part of that package.

Proposal #1: Enhanced Country Briefings

The Canadian government should produce a series of country-by-country 'human security reports'. The emphasis should be on creating, in collaboration with academics, international businesses, and NGO communities, a set of human security and human rights indicators that are relatively objective, easy to monitor, and transparent.

The results of these country reviews should be disseminated widely. In particular, they should be accessible through Industry Canada's *Strategis* database, which is a premier source of on-line information for Canadian businesses pursuing export or investment opportunities overseas.

The Department of Foreign Affairs and International Trade should also initiate embassy-level programs whereby Canadian diplomatic staff nurture dialogue between Canadian firms and local partners.

Proposal #2: Stronger Codes of Conduct

Codes of conduct, even purely voluntary codes of conduct, play an important role in encouraging companies to meet a higher standard in their international activities. Although easy to criticize for its generality and lack of concrete guidelines, the Code of International Ethics for Canadian Businesses is an important document. It has provided real guidance for numerous Canadian companies seeking to manage their operations in risky states responsibly.

Therefore, support for the Code of International Ethics for Canadian Businesses, or some alternative code of conduct, should remain a key feature of government policy.

However, the Code itself is in need of significant strengthening. To be effective, codes of conduct must be clear, concrete, and appropriate to the kinds of issues managers face. Government and businesses should work together to strengthen the International Code of Ethics for Canadian Businesses by negotiating additional, sector-specific 'protocols'. Alternatively, an existing code, such as the UN sponsored 'global compact' (see appendix B), might be adopted.

Ideally, codes of conduct should be appropriate to external monitoring and verification, and private firms or non-governmental groups must be willing and able to undertake such monitoring activities. The Government of Canada should promote the emergence of a social auditing industry in Canada with the capacity to monitor

corporate activities in risky states. To this end, Government procurement, investment insurance, embassy or business promotion support, as well as other benefits, should be made conditional on adherence to an externally monitored code of conduct.

Research has shown that voluntary codes of conduct are most effective where the government retains some form of enforcement power to sanction firms for persistent and gross non-compliance. Voluntary codes of conduct and possible regulatory measures are therefore not alternatives to one another but should be seen as parallel initiatives. The next three proposals suggest different ways to create material incentives for firms to manage their international partnerships ethically.

Proposal #3: Revise *Canadian Business Corporations Act*

Roughly 50% of Canada's largest companies are incorporated under the federal *Canada Business Corporations Act* (CBCA). Currently, the CBCA strongly inhibits shareholder initiatives linked to corporate complicity with human rights abuses. Section 137 of the CBCA allows management to reject shareholder proposals where it clearly appears that the proposal is being submitted primarily for the purposes of promoting general economic, political, racial, religious, social, or similar causes. These terms afford management enormous discretion to exclude shareholder proposals dealing with social responsibility issues, hence closing off an important channel of influence between civil-society groups and businesses and increasing pressure on Government to regulate firms directly.[11]

The *Canadian Business Corporations Act* is currently under review by Industry Canada. Every effort should be made to ensure that the revised *Act* expands the scope for shareholder resolutions on corporate social responsibility issues. Such as revision would be in the interests of the Government, the public, and Canadian corporations themselves.

Proposal #4: Revise *Income Tax Act*

Canadian tax law allows Canadian companies to deduct a portion of their foreign business income tax from their Canadian taxes, even in the absence of a formal tax treaty with that country. In 1998, the Senate Standing Committee on Foreign Affairs cited with approval a recommendation that the 'government should publicly establish thresholds of systematic human rights abuses beyond which the government...[, amongst other things,]...will not provide tax credits for taxes paid to the regime.'[12]

Although this appears to be a logical approach to reducing the incentives for corporations to operate in states where systematic violations of human rights take place, there are real disadvantages to this proposal. Most importantly, it is unlikely that the Government would be able to summon the political will to create and maintain a list of countries deemed to fall below minimum standards of human security. Nor would such a list be expedient from a foreign policy perspective. Nevertheless, it is a proposal that deserves further study and discussion.

Proposal #5: Revise *Special Economic Measures Act.*

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[11] See Canadian Lawyers Association for International Human Rights *Options Available to the Government of Canada in responding to Canadian Corporate complicity with human rights abuses*, p. 19-21.
[12] Ibid. p. 10.

The majority of Canadian firms operating in risky states manage their commercial activities ethically. But there are some firms that operate in a manner wholly out of keeping with Canadian values. It is in the interests of Canadians, and those Canadian firms that *do* behave responsibly, that the Government has at its disposal legal means for sanctioning such firms.

Therefore, the Government of Canada should broaden the interpretation of the *Special Economic Measures Act*. In particular, the Minister for Foreign Affairs should draft amendments to the *Act* to clarify the circumstances in which Cabinet may impose measures unilaterally. In particular, the amended Act should confirm that Cabinet is able to act where there are grave breaches of human rights and human security in a country.[13]

Proposal #6: Human Rights-Related Securities Regulation

Many firms active in risky states are listed on Canadian stock exchanges. This suggests an alternative approach to influencing corporate behaviour. Noting that Canada is 'home' to a large proportion of the world's junior mining companies, a recent report on the role of the diamond-mining industry in the civil war in Sierra Leone makes the following recommendation:

> All Canadian securities commissions should initiate discussion among their members about issues relating to corporate conduct in war zones, with special reference to direct or arm's length trade in weapons and materiel, involvement with individuals and companies recruited abroad to engage in hostilities in a third country, or the arrangement of mining concessions in return for protection of any sort. Guidelines dealing with such issues should be created or added to existing codes.[14]

Proposal # 7: Harmonize implementation of UN sanctions

Even where UN sanctions have been put in place, countries vary enormously in how they implement those sanctions. The United States, for instance, forbids firms to negotiate or sign agreements with sanctioned regimes. European countries, in contrast, tend to permit contracts to be negotiated and signed (though presumably do not permit the goods and services covered by those agreements to be transacted). Canada takes a middle position, permitting the negotiation of contracts with sanctioned regimes but not their finalization. This variation affords sanctioned regimes opportunities to exert 'reverse linkage' -- making commercial deals contingent on the foreign policy behaviour of home governments in an effort to create anti-sanctions lobbies in major Western states. A diplomatic initiative, perhaps within the OECD, to harmonize implementation of international sanctions

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[13] A legislative proposal – currently in draft form – has been compiled by Craig Forcese, Visiting Professor of Law at the University of Ottawa. Those interested in receiving a copy should contact him via email: cforcese@essential.org.

[14] Smillie, Gberie, Hazleton, *The Heart of the Matter*, p. 71.

would both 'level the playing field' for national firms and reduce opportunities for sanctioned regimes to play responsible members of the international community off against one another.

Questions for Discussion/Reflection

The following questions are intended to stimulate discussion and guide your reflections on the issues presented in this paper. There are no 'right' answers.

9. Do Canadian companies have a duty to reflect Canadian values in their operations abroad? If so, which Canadian actors legitimately give voice to those values?

10. Does the responsibility of Canadian corporations extend beyond observing Canadian and host-country laws and multilateral economic sanctions? If so, what are these responsibilities?

11. In the past, multinational corporations have been accused of excessive political interference in host country politics. Do public expressions of concern over human rights violations in host countries amount to 'political interference'?

12. How should we define 'corporate complicity' in human rights abuses by host-country governments?

13. What would make *you* decide not to do business in a particular country?

14. Is current Canadian law adequate to the task of managing Canadian commercial activities in risky states? Where does it fall short?

15. Surveying the menu of policy options outlined in the previous chapter, which would you recommend to government and business? Which deserve further study?

16. What can Canadian companies do to responsibly manage commercial activities in risky states, once the decision to invest there has been made?

Appendix A
Sample Codes of Conduct

This appendix sets out the provisions of three codes of conduct for international businesses. The first was produced in consultation with major Canadian corporations in response to government calls for such an international code of ethics. The second is the 'global compact', a set of nine principles set out by UN Secretary-General Kofi Annan at the 1999 Davos summit. Although generally worded in the abstract, these principles are tightly linked to existing international legal instruments. This is also the strength of the third standard included below, SA 8000. SA 8000 has been included to illustrate features that characterize a code of conduct designed with external verification in mind.

Example 1: The International Code of Ethics for Canadian Business

Vision

Canadian business has a global presence that is recognized by all stakeholders as economically rewarding to all parties, acknowledged as being ethically, socially, and environmentally responsible, welcomed by the communities in which we operate, and that facilitates economic, human resource and community development within a stable operating environment.

Beliefs

We believe that:

- We can make a difference within our sphere of influence (our stakeholders)
- Business should take a leadership role through establishment of ethical business principles
- National governments have the prerogative to conduct their own government and legal affairs in accordance with their sovereign rights. All governments should comply with international treaties and other agreements they have committed to, including the areas of human rights and social justice
- While reflecting cultural diversity and differences we should do business throughout the world consistent with the way we do business in Canada
- The business sector should show ethical leadership
- We can facilitate the achievement of wealth generation and a fair sharing of economic benefits
- Our principles will assist in improving relations between the Canadian and host governments
- Open, honest and transparent relationships are critical to our success
- Local communities need to be involved in decision-making for issues that affect them
- Multistakeholder processes need to be initiated to seek effective solutions
- Confrontation should be tempered by diplomacy

- Wealth maximization for all stakeholders will be enhanced through the resolution of human rights and social justice issues
- Doing business with other countries is good for Canada and vice versa

Values

We value:

- Human rights and social justice
- Wealth maximization for all stakeholders
- Operation of a free market economy
- A business environment which mitigates against bribery and corruption
- Public accountability by governments
- A defined code of ethics and business practice
- Protection of environmental quality and sound environmental stewardship
- Community benefits
- Good relationships with stakeholders
- Stability and continuous improvement within our operating environment

Principles

A. Concerning Community Participation and Environmental Protection, we will

- Strive within our sphere of influence to ensure a fair share of benefits to stakeholders impacted by our activities
- Ensure meaningful and transparent consultation with all stakeholders and attempt to integrate our corporate activities with local communities as good corporate citizens
- Ensure our activities are consistent with sound environmental management and conservation practices
- Provide meaningful opportunities for technology, training and capacity building within the host nation

B. Concerning Human Rights, we will:

- Support and promote the protection of international human rights within our sphere of influence
- Not be complicit in human rights abuses

C. Concerning Business Conduct, we will:

- Not make illegal and improper payments and bribes and will refrain from participating in any corrupt business practices
- Comply with all applicable laws and conduct business activities in a transparent fashion
- Ensure contractors', suppliers' and agents' activities are consistent with these principles

D. Concerning Employees' Rights and Health & Safety, we will:

- Ensure health and safety of workers is protected
- Strive for social justice and promote freedom of expression in the workplace

- Ensure consistency with universally accepted labour standards, including those relating to exploitation of child labour

Application

The signatories of this document are committed to implementation with their individual firms through the development of operational codes and practices that are consistent with the vision, beliefs, values and principles contained herein.

Example 2: UN Global Compact

Human Rights

The Secretary-General [of the UN] asks world business to:

Principle 1: support and respect the protection of international human rights within their sphere of influence; and
Principle 2: makes sure their own corporations are not complicit in human rights abuses.

Labour Standards

The Secretary-General asks world business to uphold:

Principle 3: freedom of association and the effective recognition of the right to collective bargaining;
Principle 4: the elimination of all forms of forced and compulsory labour;
Principle 5: the effective abolition of child labour; and
Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

The Secretary-General asks world business to:

Principle 7: support a precautionary approach to environmental challenges;
Principle 8: undertake initiatives to promote greater environmental responsibility; and
Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Example 3: Social Accountability 8000 (SA 8000)

1. Purpose and Scope

This standard specifies requirements for social accountability to enable a company to:

a. develop, maintain, and enforce policies and procedures in order to manage those issues which it can control or influence;
b. demonstrate to interested parties that policies, procedures, and practices are in conformity with the requirements of this standard.

The requirements of this standard shall apply universally with regard to geographic location, industrial sector, and company size.

2. Normative Elements and their Interpretation

The Company shall comply with national and other applicable law, other requirements to which the company subscribes, and this standard. When national and other applicable law, other requirements to which the company subscribes, and this standard address the same issue, that provision which is most stringent applies.

The company shall also respect the principles of the following international instruments:

ILO Conventions 29 & 105 (forced and bonded labour)
ILO Convention 87 (freedom of association)
ILO Convention 98 (right to collective bargaining)
ILO Conventions 100 & 111 (equal remuneration for male and female workers for work of equal value; discrimination)
ILO Convention 135 (workers' representatives convention)
ILO Convention 138 & Recommendation 146 (minimum age and recommendation)
ILO Convention 155 & Recommendation 164 (occupational safety and health)
ILO Convention 159 (vocational rehabilitation and employment/ disabled persons)
ILO Convention 177 (home work)
Universal Declaration of Human Rights
The United Nations Convention on the Rights of the Child

3. Definitions

1. Definition of company: the entirety of any organization or business entity responsible for implementing the requirements of this standard including all personnel (i.e.directors, executives, management, supervisors, non-management staff, whether directly employed, contracted, or otherwise representing the company).
2. Definition of supplier: a business entity which provides the company with goods and/or services integral to, and utilized in/for, the production of the company's goods and/or services.
3. Definition of a sub-contractor: a business entity in the supply chain which, directly or indirectly, provides the supplier with goods and/or services integral to, and utilized in/for, the production of the supplier's and/or company's goods and/or services.

4. Definition of remedial action: action taken to remedy a nonconformance.
5. Definition of corrective action: action taken to prevent the recurrence of a nonconformance.
6. Definition of interested party: Individual or group concerned with or affected by the social performance of the company.
7. Definition of child: Any person less than fifteen years of age unless local minimum age laws stipulates a higher age for work or mandatory schooling, in which case the higher age would apply. If, however, local minimum age laws set at 14 years of age in accordance with developing country exceptions under ILO convention 38, the lower age will apply.
8. Definition of a young worker: any worker over the age of a child as defined above and under the age of 18.
9. Definition of child labour: any work by a child younger than the ages specified in the above definition of a child except as provided for by ILO recommendation 146.
10. Definition of forced labour: all work or service that is extracted from any person under the menace of any penalty for which said person has not offered him or herself voluntarily.
11. Definition of remediation of children: all necessary support and actions to ensure safety, health, education and development of children who have been subjected to child labour as defined above and are dismissed.

4. Social Accountability Requirements

1. Child Labour

   Criteria:

   1.1 The company shall not engage in or support the use of child labour as defined above;
   1.2 The company shall establish, document, maintain, and effectively communicate to personnel and other interested parties policies and procedures for remediation of children found to be working in situations which fit the definition of child labour above, and shall provide adequate support to enable such children to attend and remain in school until no longer a child as defined above.
   1.3 The company shall establish, document, maintain, and effectively communicate to personnel and other interested parties policies and procedures for promotion of education for children covered under ILO recommendation 146 and young workers who are subject to local compulsory education laws or are attending school, including means to ensure that no such child or young worker is employed during school hours and that combined hours of daily transportation (to and from work and school), school, and work-time does not exceed 10 hours a day;
   1.4 The company shall not expose children or young workers to situations in or outside of the workplace that are hazardous, unsafe, or unhealthy.

2. Forced Labour

   Criteria:

2.1 The company shall not engage in or support the use of forced labour nor shall personnel be required to lodge deposits or identity papers upon commencing employment with the company.

3. Health and Safety

Criteria:

3.1 The company, bearing in mind the prevailing knowledge of the industry and of any specific hazards, shall provide a safe and healthy working environment and shall take adequate steps to prevent accidents and injuries to health arising out of, associated with, or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment;
3.2 The company shall appoint a senior management representative responsible for the health and safety of all personnel, and accountable for the implementation of the health and safety elements of this standard;
3.3 The company shall ensure that all personnel receive regular and recorded health and safety training, and that such training is repeated for new and reassigned personnel;
3.4 The company shall establish systems to detect, avoid, or respond to potential threats to the health and safety of all personnel;
3.5 The company shall provide, for use by all personnel, clean bathrooms, access to potable water, and, if appropriate, sanitary facilities for food storage;
3.6 The company shall ensure that, if provided for personnel, dormitory facilities are clean, safe, and meet the basic needs of the personnel.

4. Freedom of Association and Right to Collective Bargaining

Criteria:

4.1 The company shall respect the right of all personnel to form and join trade unions of their choice and to bargain collectively;
4.2 The company shall, in those situations in which the right to freedom of association and collective bargaining are restricted under law, facilitate parallel means of independent and free association and bargaining for all such personnel;
4.3 The company shall ensure that representatives of such associations are not subject to discrimination and that such representatives have access to their members in the workplace.

5. Discrimination

Criteria:

5.1 The company shall not engage in or support discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion,

disability, gender, sexual orientation, union membership, or political affiliation;

5.2 The company shall not interfere with the exercise of the rights of personnel to observe tenets or practices, or to meet needs relating to race, caste, national origin, religion, disability, gender, sexual orientation, union membership, or political affiliation;

5.3 The company shall not allow behaviour, including gestures, language, and physical contact, that is sexually coercive, threatening, abusive or exploitative.

Disciplinary Practices

Criteria:

5.4 The company shall not engage in or support the use of corporal punishment, mental or physical coercion, and verbal abuse.

6. Working Hours

Criteria:

6.1 The company shall comply with applicable laws and industry standards on working hours; in any event, personnel shall not, on a regular basis, be required to work in excess of 48 hours per week and shall be provided with at least one day off for every seven day period;

6.2 The company shall ensure that overtime work (more than 48 hours per week) does not exceed twelve hours per employee per week, is not demanded other than in exceptional and short-term business circumstances, and is always remunerated at a premium rate.

7. Compensation

Criteria:

7.1 The company shall ensure that wages paid for a standard working week shall meet at least legal or industry minimum standards and shall always be sufficient to meet basic needs of personnel and to provide some discretionary income

7.2 The company shall ensure that deductions from wages are not made for disciplinary purposes, and shall ensure that wage and benefits composition are detailed clearly and regularly for workers; the company shall also ensure that wages and benefits are rendered in full compliance with all applicable laws and that compensation is rendered in cash or cheque form, in a manner convenient to workers;

7.3 The company shall ensure that labour-only contracting arrangements and false apprenticeship schemes are not undertaken in an effort to avoid fulfilling its obligations to personnel under applicable laws pertaining to labour and social security legislation and regulation.

8. Management Systems

Criteria:

Policy

8.1 Top management shall define the company's policy for social accountability and labour conditions to ensure that it:

a) includes a commitment to conform to all requirements of this standard;
b) includes a commitment to comply with national and other applicable laws, other requirements to which the company subscribes, and to respect the international instruments and their interpretation (as listed in section 2);
c) includes a commitment to continual improvement;
d) is effectively documented, implemented, maintained, and communicated in an accessible and comprehensible form to all personnel, including, directors, executives, management, supervisors, and staff whether directly employed, contracted, or otherwise representing the company;
e) is publicly available.

Management Review

8.2 Top management shall periodically review the adequacy, suitability, and continuing effectiveness of the company's policy, procedures, and performance results vis-à-vis the requirements of this standard and other requirements to which the company subscribes. System amendments and improvements shall be implemented where appropriate.

Company Representatives

8.3 The company shall appoint a senior management representative who, irrespective of other management responsibilities, shall ensure that the requirements of this standard are met;

8.4 The company shall provide for non-management personnel to choose a representative from their own group to facilitate communication with senior management on matters related to this standard.

Planning and Implementation

8.5 The company shall ensure that the requirements of this standard are understood and implemented at all levels of the organization; methods include, but are not limited to:

a. clear definitions of roles, responsibilities, and authority;
b. training of new and/or temporary employees upon hiring;
c. periodic training and awareness programs for existing employees ;
d. continuous monitoring of activities and results to demonstrate the effectiveness of systems implemented to meet the company's policy and the requirements of this standard;

Control of Suppliers

8.6 The company shall establish and maintain appropriate procedures to evaluate and select suppliers based on their ability to meet the requirements of this standard;

8.7 The company shall maintain appropriate records of suppliers' commitments to social accountability including, but not limited to, the supplier's written commitment to:
a. conform to all requirements of this standard (including this clause);
b. participate in the company's monitoring activities as required;
c. promptly remediate any nonconformance identified against the requirements of this standard;
d. promptly and completely inform the company of any and all relevant business relationships (with other suppliers and subcontractors);

8.8 The company shall maintain reasonable evidence that the requirements of this standard are met by suppliers and sub-contractors.

Addressing Concerns and Taking Corrective Action

8.9 The company shall investigate, address, and respond to the concerns of employees and other interested parties with regard to conformance/ nonconformance with company's policy and/or the requirements of this standard; the company shall refrain from disciplining, dismissing or otherwise discriminating against any employee for providing information concerning observance of this standard.

8.10 The company shall implement remedial and corrective action and allocate adequate resources appropriate to the nature and severity of any noncompliance identified against the company's policy and/or the requirements of this standard.

Outside Communication

8.11 The company shall establish and maintain procedures to communicate regularly to all interested parties data and other information regarding performance against the requirements of this document, including, but not limited to, the results of management reviews and monitoring activities.

Access for Verification

8.12 Where required by contract the company shall provide reasonable information and access to interested parties seeking to verify conformance to the requirements of this standard; where further required by contract, similar information and access shall be afforded by the company's suppliers and subcontractors through the incorporation of such a requirement in the company's purchasing contracts.

Records

8.13 The company shall maintain appropriate records to demonstrate conformance to the requirements of this standard.

Appendix B
Special Economic Measures Act

The *Special Economic Measures Act* is an extremely comprehensive piece of legislation. The Government's powers under the Act read as follows:

...

4.(2) Orders and regulations may be made pursuant to paragraph (1)(a) with respect to the restriction or prohibition of any of the following activities, whether carried out in or outside Canada, in relation to a foreign state:

a) any dealing by any person in Canada or Canadian outside Canada in any property wherever situated held by or on behalf of that foreign state, any person in that foreign state, or a national of that foreign state who does not ordinarily reside in Canada;
b) the exportation, sale, supply or shipment by any person in Canada or Canadian outside Canada of any goods wherever situated to that foreign state or any person in that foreign state, or any other dealing by any person in Canada or Canadian outside Canada in any goods wherever situated destined for that foreign state or any person in that foreign state;
c) the transfer, provision or communication by any person in Canada or Canadian outside Canada of any technical data to that foreign state or any person in that foreign state;
d) the importation, purchase, acquisition or shipment by any person in Canada or Canadian outside Canada of any goods that are exported, supplied or shipped from that foreign state after a date specified in the order or regulations, or any other dealings by any person in Canada or Canadian outside Canada in any such goods;
e) the provision or acquisition by any person in Canada or Canadian outside Canada of financial services or any other services to, from or for the benefit of or on the direction or order of that foreign state or any person in that foreign state;
f) the docking in that foreign state of ships registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;
g) the landing in that foreign state of aircraft registered in Canada or operated in connection with a Canadian air service license;
h) the docking in or passage through Canada by ships registered in that foreign state or used, leased or chartered, in whole or in part, by or on behalf of or for the benefit of that foreign state or a person in that foreign state; and
i) the landing in or flight over Canada by aircraft registered in that foreign state or used, leased or chartered, in whole or in part, by or on behalf of or for the benefit of that foreign state or any person in that foreign state.

Appendix C
Selected Resources on Corporate Social Responsibility

Books:

John Elkington, *Cannibals with Forks: The Triple Bottom Line of 21st Century Business*
(Gabriola Island: New Society Publishers, 1998).

John Mitchell, *Companies in a World of Conflict* (London: Royal Institute of International Affairs, 1998).

Paul Schwartz and Blair Gibb, *When Good Companies Do Bad Things: Responsibility and Risk in an Age of Globalization* (Toronto: John Wiley & Sons, 1999).

Websites:

Canadian Business for Social Responsibility – http://www.cbsr.bc.ca

Business for Social Responsibility – http://www.bsr.org

UN Global Compact – http://www.unglobalcompact.org

Promoting Canadian Corporate Citizenship Abroad

A Policy Framework
on
Canadian Firms/ Canadian Values: Foreign Policy Implications of Canadian Commercial Activities in Risky States

Prepared for Canadian Business for Social Responsibility in partnership with the Canadian Centre for Foreign Policy Development

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Overview

The recent controversy over Talisman Energy's investment in an oil-pipeline project in Sudan raised important questions for Canadians. Should Canadian firms invest in countries, such as Burma or Afghanistan, where significant portions of the population suffer serious human rights abuses or threats to their personal security? Do Canadian companies bear special responsibilities when operating in environments that are the scene of bloody civil wars or brutal dictatorships? What is the role of the Canadian government in ensuring that Canadian firms reflect Canadian values in their commercial operations overseas?

Canadian Business for Social Responsibility (CBSR) urges the Government to take a more active role promoting global corporate citizenship. In particular, Government is called upon to do five things:

1. **Champion** corporate social responsibility at home and abroad.
2. **Support** continued research and training in the field of global corporate citizenship and human security.
3. **Inform** companies of the ethical risks they run when operating in conflict-prone areas.
4. **Reward** businesses that take human rights and human security seriously.
5. **Compel** improvements on the part of companies that consistently and egregiously violate Canadian and international standards.

The policy framework set out in Section A contains detailed recommendations, as well as CBSR's arguments for government action and rebuttals of arguments against government action.

These policy recommendations arose out of a deliberative process undertaken by Canadian Business for Social Responsibility in partnership with the Canadian Centre for Foreign Policy Development. Initially a Discussion Paper on Canadian Commercial activities in risky states and possible Government responses was commissioned by CBSR in partnership with the Canadian Centre for Foreign Policy Development. The discussion paper was based on the interviews with businesses, academics, government representatives, and members of the social investing community. The next step involved a Roundtable discussion, held with participants from the Canadian business sector and NGOs in Vancouver on May 2nd 2000 to deliberate the findings of the discussion paper and to make recommendations to government.

This document provides recommendations for a proposed policy framework for action on the part of Canadian Government. The Discussion Paper and the Roundtable Findings are provided under separate cover.

I. Introduction

The recent controversy over Talisman Energy's investment in an oil-pipeline project in Sudan raised important questions for Canadians:

- Should Canadian firms invest in countries, such as Burma or Afghanistan, where significant portions of the population suffer serious human rights abuses or threats to their personal security?
- Do Canadian companies bear special responsibilities when operating in environments that are the scene of bloody civil wars or brutal dictatorships?
- What is the role of the Canadian government in ensuring that Canadian firms reflect Canadian values in their commercial operations overseas?

This report, produced by Canadian Business for Social Responsibility (CBSR) in partnership with the Canadian Centre for Foreign Policy Development, argues that the Government must do more to encourage global corporate citizenship on the part of Canadian firms and sets out a policy framework for achieving this goal.

II. Arguments for Government Action:

1. Canadian firms are active in many conflict-prone areas around the world. It stands to reason that the Talisman Energy scenario is likely to repeat itself in the future. The Government's ultimate response to Talisman disappointed many Canadian NGOs as well as individual Canadians, who, in turn, are likely to be much more vocal and much more critical next time around.

2. Canadians value corporate social responsibility. In the Environics 'Millenium Poll', a recent cross-national survey, 88% of Canadians polled believed that corporations should do more than 'making a profit, paying taxes, employing people and obeying all laws'. Over $4 billion is currently invested in socially and/or environmentally screened mutual funds, and Canadians are amongst the most willing in the world to punish firms for perceived violations of social values. Opinion leader research suggests that public support for corporate social responsibility is likely to increase over the coming years.

3. The question of where and how Canadian firms operate will continue to be a serious irritant in US-Canadian relations. Such tensions would be easier to manage if Canada had in place a principled, public, and prudent strategy for mitigating the human rights impacts of Canadian corporate activities overseas.

4. Canada's leadership on the international human security agenda will be untenable unless it can respond more effectively when Canadian corporations are accused of complicity in human rights abuses.

5. There is a compelling 'market failure' argument for government intervention. At one level, firms identify corporate social responsibility as a source of competitive advantage and hence are willing to invest time and money to ensure a leadership position. But at another level, private firms need social legitimacy to operate effectively both at home and abroad. This legitimacy is built up slowly over time, in response to the concrete actions of *all* companies working within a local area. Because building this social legitimacy takes time and money and because it benefits all companies regardless of whether they have contributed to it or not, there is a short-run incentive for companies to 'free ride' on the aura of social responsibility established by other firms. This is especially true where

governance structures in host countries are weak or where an industry's supply chain makes it difficult for consumers to express their values directly through their purchasing decisions.

6. Corporate social responsibility at home and abroad is necessary to maintain social support for globalization. Canada's economic interests are well served by an expanding, open, rule-based international economic order. In the wake of public protests in Seattle and Washington, regaining public support for globalization should be a top priority for Government. Media reports of corporate complicity in human rights abuses have the potential to sap Canadians' support for global economic engagement and provide potent ammunition to globalization's more strident critics. Moreover, there is growing recognition among academics and practitioners that sustained economic growth depends on good governance, the rule of law, and the existence of a strong civil society. By permitting companies to profit from 'governance failures' in violent and/or corrupt societies, the Canadian Government is undermining the long-run interests of all Canadians.

III. Proposed Policy Framework

The Government needs to enact a comprehensive package of reforms to positively influence Canadian corporations in their commercial activities overseas. Government policy should be based on the following four propositions:

1. the vast majority of Canadian firms conduct their international operations responsibly;

2. a small minority of firms violate minimum Canadian and international standards, thereby threatening Canada's reputation;

3. the main role of Government is to champion global corporate citizenship in the Canadian business community and to actively facilitate ongoing business-NGO dialogue in the area of corporate social responsibility; and

4. a subsidiary but still necessary role for Government is to provide concrete incentives that reward good behaviour and punish firms that consistently and egregiously violate Canadian and international standards.

The Government must do five things to respond to public concern in this area. It must:

Champion...

...corporate social responsibility at home and abroad. The government needs to provide real leadership at the highest levels. Canadians would welcome a Prime Ministerial statement to the effect that Canadian companies should not operate abroad in a manner that would be unacceptable in Canada or that violates basic international norms.

Support...

...continued research and training in the field of global corporate citizenship and human security. The Government should also continue to foster ongoing and constructive dialogue between businesses and NGO groups. A key way to reward good behaviour and to disseminate best practice would be to sponsor a national awards scheme for exemplary corporate leadership in the field of human rights and social responsibility.

Inform...

...companies of the ethical risks they run when operating in conflict-prone areas. The Department of Foreign Affairs and International Trade should provide more accessible, timely, and objective information on the human rights situation in countries of concern. Canadian embassies should play an active role helping corporations that wish to bring human rights-related concerns to the attention of local government officials and facilitating ongoing dialogue between local civil society groups and Canadian firms.

Reward...

...businesses that take human rights and human security seriously. Firms should be required to demonstrate that they meet basic Canadian and international standards to gain access Government-conferred benefits that are either directly financed by Canadian taxpayers or indirectly backed by Government guarantees. A variety of positive inducements can and should be pursued, including: conditionalities on EDC credits and CIDA grants; human-rights screening for participants in Team Canada missions; revisions to the Income Tax Act to create incentives for human-rights sensitive corporate practices.

Compel...

...companies that consistently and egregiously violate Canadian and international standards. Regulatory and voluntary approaches to compliance are complementary not competing paradigms. Where credible evidence suggests Canadian firms are complicit in human rights abuses or are otherwise in violation of international norms, *senior* government officials should engage with management directly. The Government of Canada should not hesitate to make its concerns public where it meets with reluctance to engage in a constructive dialogue. Where public censure is inadequate to influence a company, the Government should force a company to divest or otherwise penalize it.

Current legislation is weak but not totally impotent. In cases where a company has publicly expressed a commitment to a certain standard of behaviour and manifestly does not meet that standard in its activities overseas the Government could bring regulatory proceedings for misrepresentation under Section 52 of the *Competition Act*. While this is an important legal avenue that Government should explore further, it does not help in cases where no such public commitment exists. Therefore, further legislation is advisable. One possibility is to revise the *Special Economic Measures Act*. Alternatively, entirely new legislation could be drafted. In either case the threat embodied in the legislation must be *credible*, not because it will be used often but because this will make voluntary approaches to compliance more effective.

On a related point, the Government should recognize the constructive role that shareholder activism can play in influencing corporate behaviour. Today, Canadian shareholders wishing to focus management's attention on human rights-related issues by bringing shareholder resolutions to a corporation's annual general meeting face serious impediments. The fact that this direct avenue for voicing concern can so easily be blocked increases the pressure on Government to take direct regulatory or legislative action. It also reduces the ability of Canadian firms to anticipate and respond flexibly to social concerns. Yet despite arguments for eliminating these impediments, the bar to shareholder action has been raised not lowered in the recently revised *Canadian Business Corporations Act* currently before Senate. Government should urgently reconsider its position on this issue.

IV. Responses to Anticipated Objections:

1. **'Constructive engagement' is the best way to promote human security in host countries.**

   Response: Although it is true that economic development is a key ingredient to enhancing human security, it does not follow that economic engagement *in itself* reduces civil conflict in risky states. Recent reports demonstrate conclusively that foreign investment in risky states – especially in the resource sector – can prolong conflict and exacerbate human security.

2. **Canada should not impose unilateral sanctions on risky states.**

   Response: Many arguments against a more active Government policy on global corporate citizenship boil down to arguments against the imposition of unilateral sanctions. Some argue that Canada's sanctions legislation does not permit such measures, others argue that unilateralism does not sit well with Canada's foreign policy tradition, while still others argue that it would be ineffectual for a small state like Canada to act alone. These arguments miss the point because they focus on state-to-state relations rather than the activities of individual firms. The proposals outlined above focus on how the Government can promote good business practices not sanction foreign governments.

3. **Measures to regulate Canadian firms operating abroad amount to an assertion of extraterritorial jurisdiction and hence are unacceptable.**

   Response: Although a degree of caution is appropriate here, there is no bar in principle to Canadian legislation aimed at dissuading corporate complicity in human rights violations overseas. The Government of Canada has the sovereign right to regulate Canadian firms. An appropriate precedent here is the

Government's willingness to legislate penalties for Canadians who engage in corrupt practices or pay to have sex with children while abroad.

4. **Canadian firms would be at a disadvantage vis-à-vis their foreign competitors if the government were to take a more active approach on corporate citizenship issues.**

   Response: Although true in some cases, this generalization is unsound. For one thing, Canadian firms face a *less* stringent domestic regulatory and legal environment than, say, their American competitors. Moreover, a significant portion of Canadian firms would welcome greater Government involvement in promoting and recognizing good corporate citizens as well as curtailing the activities of 'rogue' firms. Many companies invest significant resources to minimize the human rights or environmental impacts of their overseas operations, or forgo opportunities where the relevant risks seem too high. These socially responsible companies feel themselves to be at a disadvantage vis-à-vis their less scrupulous Canadian rivals.

5. **The Government should not try to export Canadian values because these values are not universally shared in the world community.**

   Response: It is certainly true that government (and, for that matter, businesses and NGOs) need to be culturally sensitive and to show restraint in promoting purely *Canadian* values. However, international human rights standards do exist and are embodied in international legal instruments. For all intents and purposes these can be treated as legitimate expressions of universally held values. If the Government bases its policy on the relevant international instruments, or syntheses of these international legal commitments such as the UN Global Compact, cultural relativist arguments or charges of paternalism do not apply.

6. **Businesses should not get involved in the politics of host societies.**

   Response: Businesses do need to tread a careful line here. Past criticisms of multinational enterprises tended to focus on the issue of 'political interference'. However, while accepting the need for caution and moderation, it is untrue that Canadian businesses are by their very nature 'apolitical' actors. For instance, companies lobby hard at home and abroad over public spending priorities and legal protection for foreign investors. Businesses must recognize their responsibilities as social actors and bring their political experience to bear in the area of human rights and human security.

V. Conclusion

This policy paper grows out of both the good news and the bad news discovered over the course a larger research project. The first source of good news is that there is no 'ethics deficit' on the part of the vast majority of Canadian firms. The good news for the Government is that although more – and more focused – action is necessary, the concrete building blocks for a strategic approach to this issue are either already in place or could be put into place with a minimum of effort.

There is bad news too. Despite their best efforts, many Canadian companies – especially those in the extractive industries – face significant ethical challenges when operating in risky states. Although key corporate decision-makers are much more sensitive to the need to manage the human rights and human security impacts of

their operations overseas, there is still much to be learned in key areas such as measurability, consistency, and transparency. And the basic question – 'at what threshold does it become unethical to do business in country X?' – has yet to be addressed.

The bad news for Government is that its current policy framework is fatally flawed and inconsistent. This incoherence sends confusing messages to Canadians, to Canadian firms, and to repressive regimes abroad. Although a number of ideas for reform are circulating in Ottawa, they are uncoordinated and unlikely to result in a net gain for Government in the absence of Cabinet-level attention. To succeed, the Government must bring these various policy threads together, craft them into a coherent whole, ensure that the resulting package includes all five roles outlined above (champion, support, inform, reward, and compel), and put a public face on its efforts in this area.